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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R No.72 of 1999
Date of decision:8.12.2006

The Commissioner of Income-Tax, Patiala ...Petitioner

Versus

M/S Mahavir Textiles, Chandigarh

...Respondent

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: None

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JUDGMENT

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh arising out of its order dated 20.8.1997 passed in I.T.A.No.291/Chandi/94, in respect of the assessment year 1991-92.

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in cancelling the penalty imposed on the assessee by the AO u/s 271E on the ground that the provisions of section 269T were not attracted as the transaction involved was that of a loan and not a deposit?"

During the course of assessment, the Assessing Officer found that assessee had made a cash payment of Rs.1,05,000/- to Sudershan Kumar Jain, HUF. Notice was issued under Section 269T of the Income Tax Act, 1961(for short "the Act"). In reply to which the assessee had stated that amount was paid in repayment of loan and was not by way of deposit. The stand was rejected by the Assessing Officer and a penalty of Rs.1,05,000/- was imposed. On appeal CIT (A) deleted the penalty, inter-alia, on the ground that same Assessing Officer had deleted the penalty in the similar proceedings in respect of payment to Sudershan Kumar Jain. It was further held that the

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transaction was not of the deposit but of repayment of loan and assese had bonafide belief that provisions of Section 269T were not attracted among family members.

The Tribunal affirmed the said view.

We have heard learned counsel for the revenue and perused the record.

From the order of Tribunal, we find that a finding has been recorded that transaction was of a loan and not of deposit.

We are in agreement with the view taken by the Tribunal and on the finding recorded no case is made out for imposition of penalty. It is well settled that if there was reasonable explanation for a cash transaction, no penalty shall be imposable on the person or the assessee. Section 273 B was added in the Act to incorporate this provision, even in the absence of such a provision, genuine and bonafide transaction does not invite penalty. Reference may be made to order dated 11.9.2006 passed by this Court in ITA No.102 of 1999 (**The Commissioner of Income-Tax, Jalandhar Vs. M/S Avert Chemicals (P) Limited, Jalandhar)** wherein it was held as under:-

> "It has been held by the Hon'ble Supreme Court in **Assistant Director of Inspection (Investigation) Vs. Kum.A.B.Shanthi, (2002) 255 ITR 258** that if cash payment was on account of reasonable belief, penalty will not be justified. It was observed at page 266:-
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> > "It is important to note that another provisions, namely Section 273 B was also incorporated which provides that notwithstanding anything contained in the provisions of Section 271 D, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provision if he proves that there was reasonable cause for such failure and if the assessee proves that there

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was reasonable cause for such failure to take a loan otherwise than by account-payee cheque or account-payee demand draft, then the penalty may not be levied. Therefore, undue hardship is very much mitigated by the inclusion of section 273B in the Act. If there was a genuine and bonafide transaction and if for any reason the tax payer could not get a loan or deposit by account-payee cheque or demand draft for some bonafide reasons, the authority vested with the power to impose penalty has got discretionary power."

In view of the above, we answer the question referred against the Revenue and in favour of the assessee.

The reference is disposed of.

(Adarsh Kumar Goel)
Judge

December 08,2006 **(Rajesh Bindal)**
Pka **Judge**